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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

February 24, 1999

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

96-1880

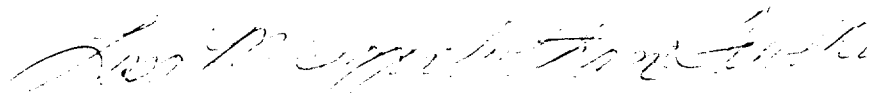
RE: Comments in Response to Petitions For Reconsideration and/or  
Clarification of the Commission's Report and Order in  
WT Docket No. 98-20

Dear Ms. Salas:

On behalf of the Association of American Railroads ("AAR"), and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, enclosed herewith for filing are an original and 11 copies of AAR's Comments in response to the Petitions for Reconsideration filed in the above-captioned proceeding.

Kindly stamp and return to this office the enclosed copy of this filing designated for that purpose. You may direct any questions concerning this material to the undersigned.

Respectfully submitted,



Lisa M. Higginbotham Fowlkes

Enclosures

12/2/98 0711  
Lisa M. Fowlkes

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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FEB 24 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Biennial Regulatory Review -- Amendment	)	WT Docket No. 98-20
of Parts 0, 1, 13, 22, 24, 25, 27, 80, 87, 90	)	
95, 97 and 101 of the Commission's Rules	)	
to Facilitate the Development and Use of	)	
Universal Licensing System in the	)	
Wireless Telecommunications Services	)	
	)	
Amendment of the Amateur Services Rules	)	
to Authorize Visiting Foreign Amateur	)	WT Docket No. 95-188
Operators to Operate Stations in the	)	
United States	)	RM-8677

**COMMENTS OF  
ASSOCIATION OF AMERICAN RAILROADS**

The Association of American Railroads ("AAR"), through its attorneys, hereby files its Comments in response to Petitions seeking reconsideration and/or clarification of the Commission's Report and Order in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION AND STATEMENT OF INTEREST**

The U.S. railroad industry collectively holds licenses for approximately 14,000 base stations in the land mobile service and several thousand licenses in the fixed microwave service. Accordingly, the industry has a significant interest in this

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<sup>1</sup> Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, Report and Order, 13 FCC Rcd 21027 (1998) ("Report and Order"). These comments are timely-filed in light of the Commission's extension of the deadline for filing initial comments to February 24, 1999. Petitions for Reconsideration and Applications for Review of Action in Rulemaking Proceedings, 64 Fed. Reg. 6360 (February 9, 1999).

proceeding, particularly with respect to several of the issues raised in Petitions for Reconsideration in this proceeding.

AAR commends the Commission for its efforts thus far to establish a streamlined approach to its licensing process through the establishment of the Universal Licensing System ("ULS"). However, AAR is concerned that some of the Commission's decisions in its Report and Order may actually result in the impairment of railroad and other quasi-public safety operations in the land mobile and microwave services. In addition, AAR is also concerned that several of the Commission's actions in the Report and Order will actually impose unnecessary regulatory burdens particularly on private wireless applicants and licensees. Accordingly, AAR welcomes the opportunity to file comments in response to the Petitions filed in this proceeding.

**II. THE COMMISSION SHOULD PROVIDE FOR THE IDENTIFICATION OF RAILROAD, POWER AND PETROLEUM SYSTEMS IN THE ULS.**

AAR supports the request by UTC, The Telecommunications Association ("UTC") that the Commission provide for the identification of railroad, power, and petroleum radio systems in the ULS.<sup>2</sup> Such identification is necessary to allow the Commission and frequency coordinators to ensure adequate interference protection to those systems which, as the Commission has recognized previously, provide "critical public safety related services." Indeed, it was the critical services provided by these systems which led the Commission to conclude that "it is important to maintain the integrity of communications on radio spectrum used for railroad, power and petroleum

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<sup>2</sup> UTC Petition, at 1-10.

operations."<sup>3</sup>

The absence of any mechanism that would allow the Commission and frequency coordinators to identify easily these systems undermines this goal by rendering it virtually impossible for a coordinator to ascertain readily which systems in the database provide these critical, quasi-public safety functions and, therefore, should be accorded special protection. Accordingly, AAR strongly urges the Commission to modify its ULS database to allow for the identification of railroad, power, and petroleum systems.

**III. THE COMMISSION MUST RECONSIDER ITS FREQUENCY COORDINATION RULES FOR FIXED MICROWAVE OPERATIONS.**

AAR agrees with the concerns raised by Comsearch and the National Spectrum Managers Association (NSMA) regarding the Commission's decision not to require frequency coordination of minor technical changes to fixed microwave operations and to require notification only to "entity(ies) with which [the licensee] normally engages in coordination."<sup>4</sup> As Comsearch<sup>5</sup> and NSMA<sup>6</sup> correctly note, some technical changes, although "minor" in nature, may still cause significant interference to other affected users. In the case of railroad operations, the potential for such interference could involve danger to personnel and damage to property. For these reasons, AAR strongly

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<sup>3</sup> Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, Second Report and Order, 12 FCC Rcd 14307, at 14329 ¶ 41 (1997).

<sup>4</sup> Report and Order, 13 FCC Rcd at 21067 ¶ 88.

<sup>5</sup> Comsearch Petition, at 1-8.

<sup>6</sup> NSMA Petition, at 4-10.

urges the Commission to reinstate the requirement for frequency coordination for all changes by Part 101 applicants and licensees that potentially may cause interference and to clarify that all affected parties must be notified of Part 101 minor technical changes.

**IV. THE COMMISSION'S NEW RULES MUST NOT IMPOSE UNDUE BURDENS ON PRIVATE WIRELESS APPLICANTS OR THEIR FREQUENCY COORDINATORS.**<sup>7</sup>

**A. The Commission Should Allow a 60-Day Return Period For Coordinated Applications.**

AAR concurs with the Personal Communications Industry Association's ("PCIA") request that the Commission reconsider its decision to reduce the period for resubmitting returned applications to 30 days. As PCIA correctly notes in its Petition, once applications are returned to a frequency coordinator, they become subject to a lengthy process which almost always requires correction by the applicant and a second coordination before the application can be refiled with the Commission. This process simply cannot be concluded within a 30-day period.<sup>8</sup> Accordingly, AAR strongly urges the Commission to reconsider its decision with respect to coordinated applications and to adopt PCIA's suggestion that the Commission allow a 60 day return period for such

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<sup>7</sup> AAR supports those commenters who argue that the Commission should not require Taxpayer Identification Numbers (TINs) from officers and directors of applicants. Federal Communications Bar Association Petition, at 8-12 ("FCBA Petition"), BellSouth Corporation Petition, at 6-8 ("BellSouth Petition"). AAR notes, however, that it appears that this requirement does not apply to private wireless applicants since they are not required to identify officers, directors, and holders of ownership interests in the license of 10% or more pursuant to 47 C.F.R. § 1.2112(a).

<sup>8</sup> PCIA Petition, at 3.

applications.

**B. The Commission Should Reconsider the Elimination of the Reinstatement Process.**

AAR agrees with the Federal Communications Bar Association's ("FCBA") request that the Commission maintain the 30-day reinstatement period.<sup>9</sup> Eliminating this process will impose too harsh a burden, particularly on private wireless licensees who may have already constructed and commenced operation of their systems, but who inadvertently failed to file their renewal application by the expiration date.

Moreover, the elimination of this period will most likely slow the FCC's administrative process as staff members are forced to process additional Special Temporary Authority requests, requests for waiver, petitions for reconsideration and applications for review, appeals, and requests for stay filed by licensees in an attempt to maintain their licenses. To avoid this consequence, AAR recommends that the Commission adopt the FCBA's proposed policy establishing a presumption that a reinstatement application will be granted where: (1) the system has been constructed and is operating in accordance with the FCC's rules; and (2) the reinstatement request is filed within 30 days of license expiration.<sup>10</sup>

**C. The Commission Should Clarify That Applicants May File Amendments To Applications That Have Appeared On Public Notice Provided That The Application Will Not Be Granted Via Random Selection Or Auction.**

AAR supports BellSouth Corporation's ("BellSouth") recommendation that the

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<sup>9</sup> FCBA Petition, at 13-16.

<sup>10</sup> Id., at 15.

Commission clarify that applicants may file amendments to pending applications that have appeared on public notice provided that the application will not be granted through lottery or competitive bidding.<sup>11</sup> As BellSouth notes, no purpose is served by precluding the filing of amendments to applications that are not subject to auction, lottery, or some other comparative application procedure. Moreover, such a requirement marks a significant departure from the treatment of amendment filings in the past.<sup>12</sup> Accordingly, AAR requests that the Commission revise Section 1.927 to allow for the filing of amendments to applications that have been placed on public notice provided that the application will not be granted pursuant to lottery, auction, or some other comparative review process (i.e., hearing).

**D. The Commission Should Clarify That Fixed Point-to-Point Microwave Applicants Are Not Required To Specify An Area of Operation.**

AAR concurs with BellSouth that the Commission should eliminate any requirement that fixed point-to-point microwave applicants specify an area of operation on their applications.<sup>13</sup> Such a requirement serves no useful purpose in light of the fact that, by definition, point-to-point microwave operations are limited to communications between two defined points.

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<sup>11</sup> BellSouth Petition, at 11.

<sup>12</sup> See e.g., 47 C.F.R. §§ 90.131 and 101.29 (1997), both of which allowed amendments of pending applications as a matter of right at any time provided that the application was not subject to a comparative application process or, in the case of land mobile, was not subject to a petition to deny.

<sup>13</sup> BellSouth Petition, at 11-12.

**E. The Commission Should Eliminate Its Requirement That Pleadings and Briefs Be Filed In Duplicate.**

AAR supports BellSouth's request that the Commission eliminate its requirement<sup>14</sup> that pleadings and briefs filed manually must be filed in duplicate.<sup>15</sup> Such a requirement is unnecessary in light of the Commission's ability to scan paper copies of documents.<sup>16</sup> Accordingly, the Commission should modify this rule to require only an original copy of a pleading or brief filed manually.

**V. THE COMMISSION SHOULD ESTABLISH A GRACE PERIOD FOR APPLICANTS EXPERIENCING TECHNICAL DIFFICULTIES.**

AAR agrees with the FCBA's request that the Commission provide a 24 hour grace period for applicants experiencing technical difficulties accessing the ULS.<sup>17</sup> Such a grace period would ensure that applicants are not penalized for technical problems beyond their control. Further, such relief is particularly beneficial in the initial stages of the ULS where unanticipated technical difficulties undoubtedly will occur. Accordingly, AAR urges the Commission to adopt a 24 hour grace period for applicants experiencing technical difficulties beyond their control.

**VI. THE COMMISSION SHOULD ALLOW ACCESS TO ULS THROUGH THE INTERNET.**

AAR supports those commenters who request that the Commission allow access

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<sup>14</sup> 47 C.F.R. § 1.51(f).

<sup>15</sup> BellSouth Petition, at 9-10.

<sup>16</sup> Report and Order, 13 FCC Rcd at 21047 ¶ 35.

<sup>17</sup> FCBA Petition, at 23-25.



to the ULS through the Internet.<sup>18</sup> As the FCBA suggests, doing so will provide additional flexibility for applicants and others who are researching licensing information, allowing them to make an access choice that best suits their needs for a particular transaction. Accordingly, permitting access to the ULS through the Internet will serve the public interest.

## VII. CONCLUSION

Although the Commission's efforts thus far to streamline its wireless application process are commendable, AAR is concerned that some of the policies adopted in the Report and Order may actually result in potential interference to railroad and other quasi-public safety operations. In addition, AAR remains concerned that several of the rules adopted in the Report and Order actually impose unnecessary and more burdensome obligations on private wireless applicants and licensees.

As the railroad industry noted in its Comments in the earlier stages of this proceeding, the Commission must take steps to ensure that the efforts to streamline the agency's wireless rules do not create unnecessary and unduly burdensome reporting requirements on private wireless applicants.<sup>19</sup> In addition, the Commission must ensure that its rule changes will not result in degradation in the quality of wireless communications. Adoption of the rule changes discussed above will go a long way to

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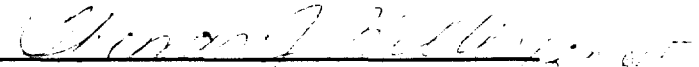
<sup>18</sup> Id., at 20-23; BellSouth Petition, at 10-11.

<sup>19</sup> Comments of Affiliated American Railroads at 2 filed May 22, 1998 in Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, Notice of Proposed Rulemaking, 13 FCC Rcd 9672 (1998).

fulfilling these two objectives. Accordingly, AAR urges the Commission to adopt the rule modifications described herein.

Respectfully submitted:

**ASSOCIATION OF AMERICAN RAILROADS**

  
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February 24, 1999

## CERTIFICATE OF SERVICE

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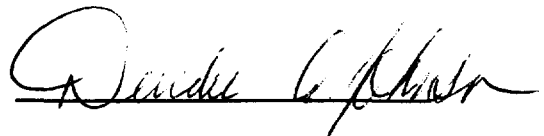
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A handwritten signature in cursive script, appearing to read "D'wana R. Terry", written over a horizontal line.